	X	
Defendant.	:	
CAPITAL ONE, N.A., d/b/a CAPITAL ONE BANK,	:	
- against –	:	No. 09-2966-ADS-AKT
Plaintiff,	:	
ERIC GUNTHER, individually and on behalf of all others similarly situated,	:	
UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK	X	

JOINT MOTION OF PLAINTIFF ERIC GUNTHER AND DEFENDANT CAPITAL ONE, N.A. FOR PRELIMINARY <u>APPROVAL OF AMENDED CLASS ACTION SETTLEMENT AGREEMENT</u>

Plaintiff Eric Gunther, individually and on behalf of all others similarly situated ("Plaintiff"), and Defendant Capital One, N.A., d/b/a Capital One Bank ("CONA") hereby move the Court for Preliminary Approval of the attached Amended Class Action Settlement Agreement ("Amended Settlement Agreement"). For purposes of this motion and accompanying Memorandum of Law, capitalized terms not otherwise defined shall have the meaning ascribed to them under the Amended Class Action Settlement Agreement, which is filed concurrently herewith.

As explained further in the accompanying Memorandum of Law, on July 21, 2010, the Court entered an Order [Docket Entry 48] preliminarily approving a settlement of this class action. The Settlement Administrator thereafter mailed notice to Settlement Class members as provided in the July 21 Order. Following mailing of the notice to Settlement Class members, publication of the Settlement, and posting of the Settlement and the Notice on the Settlement Administrator's website, CONA discovered that the names and addresses of 3,330 potential

Settlement Class members inadvertently had been omitted from the name and address list supplied to the Settlement Administrator. As a result of efforts to re-confirm data on the Settlement Class, Class Counsel also pointed out that CONA's calculations respecting the number of instances in which individual deposit accounts were charged an Undeliverable Mail Fee were incorrect. The Amended Settlement Agreement provides for notice to the additional Class Members and addresses errors relating to the number of instances in which an Undeliverable Mail Fee was charged.

Plaintiff and Defendant believe the proposed Settlement as provided in the Amended Settlement Agreement is fair, reasonable and adequate, and that the Court should therefore enter an Order substantially in the form of Exhibit A to the Amended Settlement Agreement.

Dated: September 15, 2010

WHALEN & TUSA, P.C.

/s/ Joseph S. Tusa Joseph S. Tusa (JT 9390) 33 West 19th Street, 4th Floor New York, NY 10011 Tel. (212) 400-7100 joseph@whalen-tusa.com

SCOTT + SCOTT LLP

Joseph P. Guglielmo (JG 2447) 500 Fifth Avenue, 40th Floor New York, NY 10110 Tel. (212) 223-6444 jguglielmo@scott-scott.com

Class Counsel

HUNTON & WILLIAMS LLP

/s/ Brian V. Otero
Brian V. Otero (BO 6519)
Ryan A. Becker (RB 2071)
200 Park Avenue, 52nd Fl.
New York, NY 10166
Tel. (212) 309-1020
botero@hunton.com

HUNTON & WILLIAMS LLP

Neil K. Gilman (pro hac vice) 1900 K Street, N.W. Washington, DC 20006 Tel. (202) 955-1500 ngilman@hunton.com

Counsel for Capital One, N.A.